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3                   UNITED STATES DISTRICT COURT  
4                   WESTERN DISTRICT OF WASHINGTON  
5                   AT TACOMA

6 MARY A. KELLOGG,

7                   Plaintiff,

v.

8 NATIONAL RAILROAD PASSENGER  
9 CORPORATION,

10                  Defendant.

11                  CASE NO. C20-5664BHS

12                  ORDER CERTIFYING QUESTIONS

13         THIS MATTER is before the Court on the parties' Responses, Dkts. 19, 20, and  
14 21, to the Court's prior Order, Dkt. 18, which denied Amtrak's Motion to Dismiss and  
15 sought input on the Court's proposed Certified Questions to the Washington Supreme  
16 Court. That Order includes the background to this dispute, which will not be repeated  
here.

17         The Court proposed certifying two questions of novel Washington law to the  
Washington Supreme Court under RCW 2.60.020:

18         1.         Is the revised RCW 4.20.020 remedial, such that it applies retroactively to  
19 permit second tier beneficiaries who were not eligible to assert wrongful death claims at  
20 the time of the decedent's death, or at the time the Estate's Personal Representative  
21 settled all claims arising out of the death, to assert wrongful death claims notwithstanding

1 the tortfeasor's settlement with, payment to, and release by, the Personal Representative,  
2 so long as such new claims are not time-barred?

3       2. If so, does the application of the revised RCW 4.20.020 to permit such  
4 claims in this context affect Amtrak's vested substantive rights, thus violating the  
5 Washington Constitution's Due Process (Wash. Const., art. I, § 3) or Contracts (Wash.  
6 Const., art. I, § 23) Clauses?

7 Dkt. 18 at 10-11. The parties do not object to Certification or to the Court's proposed  
8 questions.

9       Plaintiff Kellogg proposes an additional question, which she claims may moot the  
10 other two, and which she claims has not been answered by Washington law:

11       Does a duly-appointed Personal Representative, when acting as statutory  
12 agent on behalf of extant wrongful death beneficiaries pursuant to RCW  
13 4.20.010(1), also have the authority or legal capacity to assert or settle  
14 wrongful death claims for other third parties, where those third parties are  
15 not themselves lawful wrongful death beneficiaries at the time the Personal  
16 Representative is appointed and serving in that capacity?

17 Dkt. 20 at 3.

18       Amtrak opposes certifying this third question to the Washington Supreme Court. It  
19 argues that the question is confusing, and that it would not moot the other two questions.

20       Dkt. 21. It argues persuasively that a negative answer to that question would only  
21 highlight the need to address the first two questions, in order to protect settling tortfeasors  
22 and thus to promote the public policy goal of encouraging settlements.

23       The Court agrees, and indeed assumed for purposes of the motion that though  
24 Amtrak's Release was amply broad, it could not release claims that did not exist when it

1 was executed. The core issue is whether the application of revised RCW 4.20.020 to  
2 settled cases deprives a tortfeasor of vested rights, violating the Washington Constitution.

3           The Court will therefore respectfully decline to Certify Kellogg's proposed  
4 additional question to the Washington Supreme Court and will instead certify the two  
5 questions above.

6 The Court acknowledges that the decision to answer a certified question is within  
7 the Washington Supreme Court's discretion, and that the Court may reformulate the  
8 questions in its consideration of the case. This court certifies that the record contains all  
9 matters in the pending case deemed material for consideration of the local law question  
10 certified for answer under RCW 2.60.010(4)(b).

Under Wash. Rules App. Proc. 16.16(d)(1), this court designates Amtrak as the party to file the first brief in the Washington Supreme Court.

13 The Clerk shall forward copies of this Order under official seal to the Washington  
14 State Supreme Court, along with certified copies of the Court's prior Order, Dkt. 18, and  
15 the underlying briefing and declarations (with exhibits), Dkts. 6, 7, 8, 9, 10, and 11.

16 The Clerk shall STAY this case pending the Washington Supreme Court's  
17 Answer.

## **IT IS SO ORDERED.**

Dated this 29th day of April, 2021.

  
BENJAMIN H. SETTLE  
United States District Judge